

## SENATE BILL NO. 324

INTRODUCED BY TESTER, ROBERTS

BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR PRESCRIPTION DRUG ACCESS AND INFORMATION; PROVIDING FOR A STATE PHARMACY ACCESS PROGRAM TO COMPLEMENT THE FEDERAL MEDICARE PART D PROGRAM; PROVIDING THAT THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES ADMINISTER THE PROGRAM; PROVIDING FOR A PRESCRIPTION DRUG CONSUMER INFORMATION AND TECHNICAL ASSISTANCE PROGRAM AND EDUCATION OUTREACH FOR CONSUMERS AND PROFESSIONALS; AMENDING THE PRESCRIPTION DRUG EXPANSION PROGRAM AS A STATE PHARMACY DISCOUNT PROGRAM; AMENDING SECTIONS 53-6-1001, 53-6-1002, 53-6-1003, 53-6-1010, ~~AND 53-6-1013~~, AND 53-6-1201, MCA; ~~AND~~ REPEALING SECTION 13, CHAPTER 551, LAWS OF 2003; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. State pharmacy access program.** (1) The department shall administer a pharmacy access prescription drug benefit program that contributes to the cost of the premium and, optionally, to the cost of the deductible for the Part D medicare prescription drug benefit as established in Title I of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

(2) An individual is eligible for the pharmacy access program if the individual:

(a) has a family income, as adopted by rule, of up to 200% of the federal poverty guidelines set annually by the U.S. department of health and human services and is not eligible for federal low-income assistance under Part D;

(b) submits proof of enrollment in a prescription drug plan for the Part D medicare benefit.

(3) The department shall establish by rule eligibility based upon the applicant's family income within the range provided in subsection (2). The department may adopt rules defining income. In establishing eligibility based upon income, the department shall take into account the amount of funding available for the program.

(4) The department shall set an amount of benefit for the premium and may optionally set a portion of the deductible by rule based on the numbers enrolled and the appropriation.

(5) The department shall open the enrollment of the pharmacy access program at the same time as enrollment commences for the medicare Part D program.

(6) If the department determines that there are excess funds for the pharmacy access program, it may use the funds for the program provided for in 53-6-1002.

~~(7) (A) THE DEPARTMENT MAY NOT CONTRACT WITH EITHER AN IN-STATE OR OUT-OF-STATE MAIL SERVICE PHARMACY, AS DEFINED IN 37-7-702, FOR THE PURPOSES OF THE PHARMACY ACCESS PROGRAM FOR AT LEAST 1 YEAR AFTER PERSONS ELIGIBLE FOR THE PROGRAM HAVE BEGUN TO PURCHASE DRUGS THROUGH THE PROGRAM. AT THAT TIME, THE DEPARTMENT SHALL EVALUATE THE NUMBER OF PHARMACIES WITHIN THE STATE PROVIDING PRESCRIPTION DRUGS AS PART OF THE PHARMACY ACCESS PROGRAM.~~

~~(B) IF THE DEPARTMENT DETERMINES THAT THERE ARE INSUFFICIENT PHARMACIES PARTICIPATING IN THE PROGRAM TO ALLOW REASONABLE ACCESS TO PERSONS QUALIFIED TO PURCHASE PRESCRIPTION DRUGS THROUGH THE PROGRAM, IT MAY, AFTER THE EVALUATION PROVIDED FOR IN SUBSECTION (7)(A), USE ONE OR MORE IN-STATE OR OUT-OF-STATE MAIL SERVICE PHARMACIES, OR BOTH, FOR THE PURPOSES OF THE PROGRAM.~~

**NEW SECTION. Section 2. Department administration -- pharmacy access.** (1) The department shall administer the pharmacy access program. The department shall provide for outreach and enrollment in the pharmacy access program. The department shall integrate the enrollment and outreach procedures with other services provided to individuals and families eligible for other related programs.

(2) The department shall report on Montana's prescription drug use, needs, and trends and submit a report with recommendations to the governor and to the legislature by September 15, 2006.

**NEW SECTION. Section 3. Prescription drug consumer information and technical assistance program -- education outreach for consumers and professionals.** (1) There is a prescription drug consumer information and technical assistance program in the department to provide Montana residents with advice on the prudent use of prescription drugs and how to access government and private prescription drug programs and discounts. The program must include consultation by licensed pharmacists with individuals on how to avoid dangerous drug interactions and provide for substitution of more cost-effective drugs with approval by the prescribing health care professional.

(2) The department shall create educational resources, including a website, concerning the costs and benefits of various drugs to inform consumers and medical practitioners on clinically effective and cost-conscious

1 prescription drugs.

3 **Section 4.** Section 53-6-1001, MCA, is amended to read:

4 **"53-6-1001. Definitions.** As used in this part, unless the context requires otherwise, the following  
5 definitions apply:

6 (1) "Average wholesale price" means the wholesale price charged on a specific ~~commodity~~ DRUG that  
7 is assigned by the drug manufacturer and is listed in a nationally recognized drug pricing file.

8 (2) "Department" means the department of public health and human services provided for in Title 2,  
9 chapter 15, part 22.

10 (3) "Discounted price" means ~~a price that is less than or equal to the average wholesale the A price;~~  
11 ~~minus a percentage between 6% and 25% allowed by the medicaid program, including administrative costs and~~  
12 ~~dispensing fees, as determined SET~~ by the department BY RULE pursuant to 53-6-1002.

13 (4) "Gross household income" has the meaning provided in 15-30-171.

14 (5) "Manufacturer" means a manufacturer of prescription drugs and includes a subsidiary or affiliate of  
15 a manufacturer.

16 (6) "Participating retail pharmacy" means a retail pharmacy located in this state or another business  
17 licensed to dispense prescription drugs in this state that is medicaid-approved.

18 (7) "Program" means the ~~medicaid~~ prescription drug plus discount program provided for in 53-6-1002.

19 (8) "Secondary discounted price" means the discounted price less any further discounts funded by  
20 manufacturer rebates for medication purchased by participants in the program."

22 **Section 5.** Section 53-6-1002, MCA, is amended to read:

23 **"53-6-1002. Prescription drug expansion plus discount program -- rules.** (1) ~~By July 1, 2004, or~~  
24 ~~upon securing any necessary waivers, the The~~ department ~~shall provide for an expansion of~~ may provide for  
25 a prescription drug benefits under the medicaid plus discount program ~~by offering prescription drugs at a~~  
26 ~~discounted price to qualified individuals whose income is at a level set by the department at or below 200%~~  
27 250% of the federal poverty level and who meet the requirements in 53-6-1003. ~~Subject to subsection (7), the~~  
28 ~~department shall charge an annual application fee of \$25 for the program. The application fee must be deposited~~  
29 ~~in the medicaid prescription drug rebate account established in subsection (2).~~

30 (2) There is a ~~medicaid~~ prescription drug plus discount program rebate account in the state special

1 revenue fund to the credit of the department. All money received by the state as rebates from pharmaceutical  
2 manufacturers for the ~~medicaid prescription drug expansion~~ program must be deposited in the account. The  
3 money in the account, which is administered by the department, must be used to expand ~~medicaid~~ prescription  
4 drug benefits to qualified individuals. Interest on account balances accrues to the account. The purpose of the  
5 account is to:

6 (a) reimburse participating retail pharmacies for the ~~discount on the average wholesale price of~~  
7 ~~prescription drugs provided to qualified residents pursuant to this part~~ secondary discounted price; and

8 (b) reimburse the department for contracted services, administrative costs, associated computer costs,  
9 professional fees paid to participating retail pharmacies, pharmacy benefit administrators, and other reasonable  
10 program costs.

11 (3) The department shall provide for sufficient personnel to ensure efficient administration of the  
12 program. The extent and the magnitude of the program must be determined by the department on the basis of  
13 the calculated need of the recipient population and available funds. The department may not spend more on this  
14 program than is available through appropriations, federal or other grants, and other established and committed  
15 funding sources. The department may accept, for the purposes of carrying out this program, federal funds  
16 appropriated under any federal law relating to the furnishing of free or low-cost drugs to disadvantaged, elderly,  
17 and disabled individuals, may take action that is necessary for the purposes of carrying out that federal law, and  
18 may accept from any other agency of government, individual, group, or corporation funds that may be available  
19 to carry out this part.

20 (4) The department may adopt rules relating to the conduct of this program. ~~The rules may be based~~  
21 ~~upon rules adopted in other states to administer similar programs.~~

22 (5) The department shall, IF THE DEPARTMENT DETERMINES THAT SUFFICIENT FUNDS ARE AVAILABLE, adopt  
23 rules to establish the secondary discounted price to be charged to participants in the program. The department  
24 may establish a secondary discounted price to encourage the use of generic drugs over higher-cost brand-name  
25 drugs.

26 (6) The department shall establish by rule eligibility based upon the applicant's family income as  
27 provided in 53-6-1003. The total income may not exceed ~~200%~~ 250% of the federal poverty level. The  
28 department may adopt rules defining income. In establishing eligibility based upon income, the department shall  
29 take into account the amount of funding available for the program. The department shall issue enrollment ~~cards~~  
30 materials to eligible individuals.

(7) Establishment of the ~~prescription drug expansion~~ program is contingent upon ~~approval by the federal government that the program in this part will qualify for federal financial participation under~~ compliance with all applicable federal laws implementing the medicaid program. The department may adopt rules necessary to implement conditions required by federal law ~~or conditions required as part of the federal government's agreement to waive certain requirements of federal law~~.

(8) If program costs are expected to exceed the legislative authorization for the program, the department shall adjust discounted prices, ~~the application fee~~, or eligibility standards to maintain the program within the available funding.

(9) Participation in the program by a pharmacy OR A PHARMACEUTICAL MANUFACTURER is voluntary.

(10) (A) THE DEPARTMENT MAY NOT CONTRACT WITH EITHER AN IN-STATE OR OUT-OF-STATE MAIL SERVICE PHARMACY, AS DEFINED IN 37-7-702, FOR THE PURPOSES OF THE PROGRAM FOR AT LEAST 1 YEAR AFTER PERSONS ELIGIBLE FOR THE PROGRAM HAVE BEGUN TO PURCHASE DRUGS THROUGH THE PROGRAM. AT THAT TIME, THE DEPARTMENT SHALL EVALUATE THE NUMBER OF PHARMACIES WITHIN THE STATE PROVIDING PRESCRIPTION DRUGS AS PART OF THE PROGRAM.

(B) IF THE DEPARTMENT DETERMINES THAT THERE ARE INSUFFICIENT PHARMACIES PARTICIPATING IN THE PROGRAM TO ALLOW REASONABLE ACCESS TO PERSONS QUALIFIED TO PURCHASE PRESCRIPTION DRUGS THROUGH THE PROGRAM, IT MAY, AFTER THE EVALUATION PROVIDED FOR IN SUBSECTION (10)(A), USE ONE OR MORE IN-STATE OR OUT-OF-STATE MAIL SERVICE PHARMACIES, OR BOTH, FOR THE PURPOSES OF THE PROGRAM."

**Section 6.** Section 53-6-1003, MCA, is amended to read:

**"53-6-1003. Eligibility -- income determination.** ~~(4)~~ To be eligible for the program, an individual ~~must~~ be shall:

~~(a)(1) at least 62 years of age~~ reside in a household with an income level less than or equal to 250% of the federal poverty guidelines as adopted by the U.S. department of health and human services; and

~~(b)(2) 18 years of age or older and determined to be disabled by the federal social security program;~~  
~~or~~

~~—— (c) eligible for mental health services pursuant to 53-21-702(2)~~ lack prescription drug coverage or provide documentation that the individual has exceeded the coverage of the individual's prescription drug benefits.

~~(2) Subject to 53-6-1002(8), individuals are eligible for the program if the gross household income is~~

1 at or below the amount set by the department, which may not be more than 200% of the federal poverty level.  
2 (~~Subsection (1)(c) void on occurrence of contingency--sec. 11, Ch. 551, L. 2003.~~)"

3  
4 **Section 7.** Section 53-6-1010, MCA, is amended to read:

5 **"53-6-1010. Specifications for administration of program.** (1) The department shall adopt  
6 specifications for the administration and management of the program. Specifications may include but are not  
7 limited to program objectives, accounting and handling practices, supervisory authority, and an evaluation  
8 methodology. ~~The department shall apply for any waivers of federal law that are necessary to implement the~~  
9 ~~program.~~

10 (2) Information disclosed by manufacturers during negotiations and all terms and conditions negotiated  
11 between the director and manufacturers and all information requested or required under the program ~~must be~~  
12 ~~kept confidential~~ are public information, except ~~as for information that~~ the department determines is necessary  
13 ~~to carry out the program~~ proprietary information. ~~The department shall comply with the budget neutrality~~  
14 ~~provisions required by the United States department of health and human services for the granting of any~~  
15 ~~waivers.~~

16 (3) The department may use a formulary or other committee to determine preferred drug lists for  
17 department programs. The department shall include a representative of consumers on any formulary committee  
18 or committee to determine preferred drug lists for purchase by the department or reimbursement of costs. Any  
19 formulary or preferred drug list must be based on objective clinical data on safety and effectiveness. If two or  
20 more drugs are found to be equally effective and safe for the treatment of the same medical condition, the drug  
21 available at the lowest net price, inclusive of discounts and rebates, must be placed on the list. Other drugs for  
22 treating the same medical condition may be added to the list if they become available at a price equal to or lower  
23 than an equivalent listed drug and are therapeutically equivalent AND THE DEPARTMENT DETERMINES THEM TO BE  
24 COST-EFFECTIVE.

25 (4) The department may negotiate rebates from the prescription drug manufacturers for drugs that will  
26 be on any preferred drug list. The department may negotiate price discounts with prescription drug  
27 manufacturers for any state-purchased health care programs, including medicaid, the state children's health  
28 insurance program, and the program provided for in 53-6-1002.

29 ~~(3)(5) The department may not shall MAY use the access restrictions, rebates and supplemental rebates,~~  
30 ~~or a and a preferred drug list to comply with the budget neutrality provisions when negotiating with the federal~~

government for this waiver. These restrictions do not apply to other components of the medicaid or mental health services plan or drugs provided in those programs. These restrictions apply only to the prescription drug expansion program provided for in 53-6-1002: to negotiate for the most favorable discount prices and rebates for the program.

(6) The department may participate in multistate purchasing pool initiatives for the benefit of the program. (Subsection (3) terminates June 30, 2005--sec. 13, Ch. 551, L. 2003.)"

**Section 8.** Section 53-6-1013, MCA, is amended to read:

**"53-6-1013. Contracting.** The department may contract for the administration of any components of the program, including but not limited to outreach, eligibility, claims, administration, price and rebate negotiations, and drug rebate recovery and redistribution. Any contract to administer any program component must prohibit the contractor from receiving any compensation or other benefit from any drug manufacturer, labeler, or distributor participating in the medicaid or prescription drug plus discount programs."

**SECTION 9. SECTION 53-6-1201, MCA, IS AMENDED TO READ:**

**"53-6-1201. Special revenue fund -- health and medicaid initiatives.** (1) There is a health and medicaid initiatives account in the state special revenue fund established by 17-2-102. This account is to be administered by the department of public health and human services.

(2) There must be deposited in the account:

(a) money from cigarette taxes deposited under 16-11-119(1)(c); ~~and~~

(b) money from taxes on tobacco products other than cigarettes deposited under 16-11-206(1)(b); and

(c) any interest and income earned on the account.

(3) This account may be used only to provide funding for:

(a) the state funds necessary to take full advantage of available federal matching funds in order to maximize enrollment of eligible children under the children's health insurance program, provided for under Title 53, chapter 4, part 10, and to provide outreach to the eligible children. The increased revenue in this account is intended to increase enrollment rates for eligible children in the program and not to be used to support existing levels of enrollment based upon appropriations for the biennium ending June 30, 2005.

(b) a new need-based prescription drug program established by the legislature for children, seniors, chronically ill, and disabled persons that does not supplant similar services provided under any existing program;

(c) increased medicaid services and medicaid provider rates. The increased revenue is intended to increase medicaid services and medicaid provider rates and not to supplant the general fund in the trended traditional level of appropriation for medicaid services and medicaid provider rates.

(d) an offset to loss of revenue to the general fund as a result of new tax credits or to fund new programs to assist small businesses with the costs of providing health insurance benefits to employees, if these tax credits or programs are established by the legislature after the effective date of this section.

(4) (a) Except for \$1 million appropriated for startup costs related to [sections 1 and 2], the money appropriated for fiscal year 2006 for the program in subsection (3)(b) may not be expended until the office of budget and program planning has certified that \$25 million has been deposited in the account provided for in this section or December 1, 2005, whichever occurs earlier.

(b) On or before July 1, the budget director shall calculate a balance required to sustain the program in subsection (3)(b) for each fiscal year of the biennium. If the budget director certifies that the reserve balance will be sufficient, then the department may expend the revenue for the program as appropriated. If the budget director determines that the reserve balance of the revenue will not support the level of appropriation, the budget director shall notify the department. Upon receipt of the notification, the department shall adjust the operating budget for the program to reflect the available revenue as determined by the budget director.

(c) Until the programs or credits described in subsections (3)(b) and (3)(d) are established, the funding must be used exclusively for the purposes described in subsections (3)(a) and (3)(c).

(5) The phrase "trended traditional level of appropriation", as used in subsection (3)(c), means the appropriation amounts, including supplemental appropriations, as those amounts were set based on eligibility standards, services authorized, and payment amount during the past five biennial budgets.

(6) The department of public health and human services may adopt rules to implement this section."

**NEW SECTION. SECTION 10. CONTINGENCY ON EXPENDITURE.** [SECTIONS 1 THROUGH 3] AND TITLE 53, CHAPTER 6, PART 10, MAY NOT BE CONSTRUED TO REQUIRE IMPLEMENTATION OR ONGOING OPERATION OF THE PROGRAM UNDER 53-6-1201(3)(B) WITHOUT A LINE ITEM APPROPRIATION IN THE GENERAL APPROPRIATIONS BILL INCLUDED FOR THAT PURPOSE.

**NEW SECTION. Section 11. Repealer.** Section 13, Chapter 551, Laws of 2003, is repealed.



1        NEW SECTION. Section 12. Codification instruction. [Sections 1 through 3 AND 10] are intended  
2 to be codified as an integral part of Title 53, chapter 6, part 10, and the provisions of Title 53, chapter 6, part 10,  
3 apply to [sections 1 through 3 AND 10].

4  
5        COORDINATION SECTION. SECTION 13. COORDINATION INSTRUCTION. IF HOUSE BILL NO. 667 AND THIS  
6 BILL ARE BOTH PASSED AND APPROVED, SECTION 53-6-1201 MUST READ AS FOLLOWS:

7        **"53-6-1201. Special revenue fund -- health and medicaid initiatives.** (1) There is a health and  
8 medicaid initiatives account in the state special revenue fund established by 17-2-102. This account is to be  
9 administered by the department of public health and human services.

10        (2) There must be deposited in the account:

11        (a) money from cigarette taxes deposited under 16-11-119(1)(c); ~~and~~

12        (b) money from taxes on tobacco products other than cigarettes deposited under 16-11-206(1)(b); and

13        (c) any interest and income earned on the account.

14        (3) This account may be used only to provide funding for:

15        (a) the state funds necessary to take full advantage of available federal matching funds in order to  
16 maximize enrollment of eligible children under the children's health insurance program, provided for under Title  
17 53, chapter 4, part 10, and to provide outreach to the eligible children. The increased revenue in this account  
18 is intended to increase enrollment rates for eligible children in the program and not to be used to support existing  
19 levels of enrollment based upon appropriations for the biennium ending June 30, 2005.

20        (b) a new need-based prescription drug program established by the legislature for children, seniors,  
21 chronically ill, and disabled persons that does not supplant similar services provided under any existing program;

22        (c) increased medicaid services and medicaid provider rates. The increased revenue is intended to  
23 increase medicaid services and medicaid provider rates and not to supplant the general fund in the trended  
24 traditional level of appropriation for medicaid services and medicaid provider rates.

25        (d) an offset to loss of revenue to the general fund as a result of new tax credits; ~~or~~

26        (e) to fund new programs to assist eligible small businesses employers with the costs of providing health  
27 insurance benefits to eligible employees; if these tax credits or programs are established by the legislature after  
28 the effective date of this section;

29        (f) the cost of administering the tax credit, the purchasing pool, and the premium incentive payments  
30 and premium assistance payments as provided in [sections 1 through 9 in House Bill No. 667]; and

1 (g) to provide a state match for the medicaid program for premium incentive payments or premium  
2 assistance payments to the extent that a waiver is granted by federal law as provided in [section 10 in House  
3 Bill No. 667].

4 (4) (a) Except for \$1 million appropriated for the startup costs of [sections 1 and 2 in Senate Bill No.  
5 324], the money appropriated for fiscal year 2006 for the programs in subsections (3)(b) and (3)(d) through (3)(g)  
6 may not be expended until the office of budget and program planning has certified that \$25 million has been  
7 deposited in the account provided for in this section or December 1, 2005, whichever occurs earlier.

8 (b) On or before July 1, the budget director shall calculate a balance required to sustain each program  
9 in subsection (3) for each fiscal year of the biennium. If the budget director certifies that the reserve balance will  
10 be sufficient, then the agencies may expend the revenue for the programs as appropriated. If the budget director  
11 determines that the reserve balance of the revenue will not support the level of appropriation, the budget director  
12 shall notify each agency. Upon receipt of the notification, the agency shall adjust the operating budget for the  
13 program to reflect the available revenue as determined by the budget director.

14 (c) Until the programs or credits described in subsections (3)(b) and (3)(d) are established, the funding  
15 must be used exclusively for the purposes described in subsections (3)(a) and (3)(c).

16 (5) The phrase "trended traditional level of appropriation", as used in subsection (3)(c), means the  
17 appropriation amounts, including supplemental appropriations, as those amounts were set based on eligibility  
18 standards, services authorized, and payment amount during the past five biennial budgets.

19 (6) The department of public health and human services may adopt rules to implement this section."  
20

21 NEW SECTION. SECTION 14. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE JULY 1, 2005.

22 - END -